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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5842 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT RURAL HOUSING BOARD

Versus

KANUBHAI HARTANBHAI LODHA

Appearance:

MR HS MUNSHAW for Petitioner

MR SR SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/03/2001

ORAL JUDGEMENT

1. The petitioner Gujarat Rural Housing Board being a Board, constituted under the provisions of the Gujarat Rural Housing Board Act, has preferred this petition before this Court under Article 226 and 227 of the

Constitution of India for appropriate writ, order or direction for quashing and setting aside the impugned order passed by the learned Preceding Officer of the Special Labour Court at Ahmedabad dated 13.6.1998 in Reference (LCIDAT) No. : 1245/84 under which, the learned Preceding Officer of the Special Court allowed the said reference of the respondent and directed the petitioner Board to reinstate the respondent in the service with effect from 1.1.1984 with full back wages and further directed parties to the reference to bear their own costs in the Reference.

2. The facts of the case may be briefly stated as under :-

It seems that the respondent was appointed as Daily wager Sweeper in Class - IV services of the petitioner Board under order dated 18.3.1986, which is placed at Annexure - A at page No. 11. The terms and conditions of the appointment have been incorporated in the order itself. Thereafter, the petitioner Board had taken a decision that the employees who have been temporarily and provisionally appointed should not be continued and therefore, their services should be immediately terminated. Orders were passed on 13th July, 1983, which are placed at Annexure - C at page No. 19. This shows that alongwith the respondent, two other employees were also included in the order and their services were also terminated.

3. Thereafter, another order was passed on 1.8.1983, which was placed at Annexure - B at page no. 17, under which, it has been directed that the services of the respondents were terminated since his appointment was not made after following due procedure of Rules. The order further shows that the respondent should be paid one month salary under Section 25(F) of the Industrial Dispute Act, 1947 (for short "Act"). The order further shows that the respondent shall also be entitled to retrenchment allowances as per the order. The order further shows that the respondent shall be paid one month notice salary and one month retrenchment salary and the respondent should collect the said amount from the Account branch of the office.

4. It further shows that the account branch was also directed by way of copy of the said order and direction was given to the account branch that the aforesaid payment will be made to the respondent forthwith.

5. It seems that the respondent did not accept the

said amount from the said branch and ultimately, the petitioner had sent the said amount by Money order on 9.8.1993. It appears that even the salary for the period from 1.8.1983 to 9.8.1983 was also included in the said amount. The respondent did not accept the said amount also.

6. Thereafter, the respondent went for a Reference. The reference was made and the matter was referred to the learned Presiding Officer, Special Court at Ahmedabad. After hearing the parties, the learned Presiding Officer of the said Court in the aforesaid Reference directed the reinstatement of the respondent in the employment of the petitioner with consequential benefits narrated hereinabove.

7. Feeling aggrieved by the said judgement and award of the learned Labour Court, the petitioner has preferred this petition before this Court. It has been mainly contended that the learned Presiding Officer of the Labour Court has committed illegality in accepting the reference and in passing the award against the petitioner. It is further contended that the learned Presiding Officer has erred in holding that there was violation of the provisions of the said Act. It is further contended that the entire payment tendered has not been appropriately considered. That on the whole, the judgement and award of the learned Presiding Officer are illegal and erroneous.

8. It has further been contended that after termination of the services of the the respondent, he was accommodated in another office of the petitioner elsewhere. That there also, his services were required to be terminated. That the respondent did not apply for any reference with respect to that termination and therefore, the Presiding Judge of the Labour Court could not decide the said termination as it was not a reference pending with him. That therefore, the judgement and award of the learned Presiding Judge are illegal and erroneous from that angle also.

9. It is therefore prayed that the present petition be allowed and the judgement and award of the learned Presiding Judge of the Special Court as aforesaid be quashed and set aside.

10. On receiving the petition, Rule was issued and interim stay of the operation was granted on 22.12.1988. Mr. S.R. Shah learned advocate for the respondent has appeared on behalf of the respondent pursuant to the

service of Rule. I have heard the learned advocates for the parties and have perused the papers.

11. The facts are not very much in dispute that the respondent herein was in the employment of the petitioner. The appointment order dated 18.3.1986 can be gathered at Annexure - A at page no. 15 to the petition.

12. According to the case of the petitioner, the service of the respondent was terminated by order dated 1.8.1983 at Annexure - B at page no. 17. It is also contended by the petitioner that the order of termination of service itself made it clear that the respondent should receive one month salary under Section 25(F) of the Act as well as retrenchment compensation and one month salary in lieu of notice plus the salary payable to the respondent upto 1st August, 1983.

13. It appears that the copy of the said order was sent to the account branch with a direction to the said branch to pay the aforesaid amount to the respondent forthwith.

14. The respondent has come out with a case that he was never served with the said order. There is nothing on the record to show that the said order was served upon the respondent at any point of time.

15. It appears that the learned Presiding Judge of the labour Court has dealt with this issue while deciding the reference and while passing award in favour of the respondent. The said award has been placed by the petitioner at Annexure - D at page no. 21. The said award was made on 13th June, 1988.

16. After appreciation of evidence produced before the learned presiding officer of the Special Labour Court at Ahmedabad, the learned presiding officer has recorded a finding of fact that the petitioner had not followed the provisions made in Section 25(F) of the Act. It has also been recorded by the said Court that one month salary was not paid to the respondent in lieu of notice. That the retrenchment compensation was also not paid to the respondent. Now, this is a finding of fact and this Court is not sitting as a Court of Appeal over the decision of the Labour Court. The petition has been filed under Article 226 and 227 of the Constitution of India. Therefore, the extra ordinary constitutional powers and jurisdiction have been sought to be invoked by filing this petition, wherein, disputed question of facts cannot be entertained and decided by this Court while

exercising such extra ordinary constitutional powers.

17. Therefore, it is not possible for this Court to deal with and decide the said disputed question of fact as if, this Court is sitting as a court of appeal over the decision of the Labour Court.

18. Once it is found that the Labour Court has recorded a finding of fact that the provisions of Section 25(F) of the Act have not been complied with as aforesaid, then, it would not be open for this Court to change the said finding of fact. Once the said finding of fact does not get altered or change and so long as the said finding stands, then, it goes without saying that the petitioner has not complied with the requirement of Section 25(F) of the Act.

19. It is not in dispute between the parties that the provisions made in Section 25(F) of the Act are mandatory and it was compulsory on the part of the petitioner to follow the provisions made in Section 25(F) of the Act. It would be necessary to consider here that the learned Presiding Officer of the Sp. Labour Court has in fact, referred the provisions made in Section 25(F) of the Act during the course of his judgement at page no. 28. The learned preceding Judge has appreciated the material placed before it and then the learned Judge has recorded a finding of fact that the aforesaid provision has not been complied with. So again, it is a finding of fact based on appreciation of evidence. As said above, this court cannot enter into disputed question of fact. More over, this Court cannot entertain the exercise of reappreciation of evidence. In above view of the matter, again he stands to the finding that the provisions contained in Section 25(F) of the Act have not been complied and since the provisions are mandatory, nor observation of the said provisions will prove fetal of the case of the petitioner.

20. An attempt was made to show that the respondent did not accept the order dated 1.8.1983 and therefore, the salary and allowance were sent by Money Order to the respondent.

21. As against this, the learned advocate for the respondent Mr. S.R.Shah has made a categorical statement before this Court that this order at Annexure - B does not bear the signature of the respondent showing that the order was served upon him. He also made a statement that this order was not placed before the labour Court, where, the matter was conducted. He further clarifies that the

order is not a certified one.

22. It is also the argument of the learned advocate for the respondent that the original order is placed at page 43. The order is dated 30th July, 1983, which shows that the respondent was shown as relieved from the employment with effect from 1.8.1983.

23. Now, so far this order at page no. 43 dated 30th July, 1983 is concerned, again it does not follow the requirement of Section 25(F) of the Act. It is not coupled with retrenchment compensation, salary in lieu of notice etc. etc.

24. It appears that the money order was sent for the compliance of Section 25(F) of the Act by the petitioner to the respondent but that was not alongwith the order itself. The law does not permit tender of money payable under Section 25(F) of the Act, after the tender of order itself. In fact, the termination order or the retrenchment order and the payment both should go together hand to hand. In the present case, it is found that even the order dated 30th July, 1983 at page no. 43 was not served upon the respondent alongwith amount payable under Section 25(F) of the Act.

25. It would be important to note here that the order dated 30th July, 1983 at page no. 43 does not point out that the necessary amount in compliance with the provisions made in Section 25(F) of the Act was tendered alongwith said order. There is no material to show that that the said amount was tender to the respondent, when the said order dated 30th July, 1983 at page no. 43 was served upon him.

26. It would be pertinent to note that the contesting respondent has filed affidavit in reply at Page no. 35. It is also pertinent to note that the aforesaid affidavit has been filed on 19th September, 1988. This shows that since beginning the respondent had came out with a case that he was not paid the aforesaid amount payable under Section 25(F) of the Act at relevant time. The allegations and averments, made in the petition have been clearly denied by the respondent, therefore, these are the disputed questions of fact which cannot be entertained by this Court in this petition.

27. The learned advocate for the petitioner was not in a position to explain as to why aforesaid order was not placed before the Labour Court for its appreciation.

28. Any way, the matter has been decided by the Labour Court on the basis of appreciation of evidence on disputed question of fact. This Court cannot reappreciate the evidence. This Court also cannot reconsider the disputed questions of fact. If, these two aspects are properly taken into account, then it is not possible for this Court to hold that the Labour Court has committed any illegality in deciding the matter before it. Since the petitioner has not been able to show that he provisions of Section 25(F) of the ACt had been complied with by the petitioner and despite the compliance of the said legal provisions, the Labour Court has over looked that said provision and has decided the said matter illegally against the petitioner.

29. This would clearly mean that the order of the Labour Court does not appear to be illegal on the face of it and therefore, it cannot be lightly quashed and set aside by this Court.

30. So, the order of termination of service of the respondent, dated 1.8.1983 at Annexure - B at page No. 17 is not proved to have been served upon the respondent and the order dated 30.7.1983 at Annexure - I at page no. 43 does not indicate or prove that the amount necessary in compliance of Section 25 (F) of the Act, was tendered or sent alongwith it. Both these documents clearly show non-observance of Section 25(F) of the Act.

31. In case the respondent has been given work with wages in accordance with the order dated 18.3.1986 at Annexure - A at Page no. 15, then payment made to the respondent pursuant thereto shall be taken into account while considering payment required to be made in accordance with the order of the Labour Court.

32. With the aforesaid observations, this petition is ordered to be dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

(D.P. Buch, J.)

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